



YOU & YOUR ATTORNEY



HOW DO I CHOOSE A PRIVATE ATTORNEY?

One of the best ways is to contact a private attorney who has effectively helped you (or a friend or family member) in the past. You can also ask a legal assistance attorney to help with a referral. You may also consider contacting the bar association for the state or city involved. Many bar associations maintain a list of attorneys who specialize in different areas of law. You can also choose a lawyer based on advertising or any number of other ways. The important thing is that you choose a lawyer who is able to handle your case and able to work with you. Any way of selecting a lawyer is satisfactory if it achieves these goals.

WHEN WOULD I NEED A CIVILIAN ATTORNEY INSTEAD OF A LEGAL ASSISTANCE ATTORNEY?

A legal assistance attorney may not be able to help you in every situation due to military regulations and available resources. For example, legal assistance attorneys cannot actively pursue litigation on your behalf. In such cases, you will need to retain a private attorney. Your legal assistance attorney will let you know if your case requires referral to a civilian attorney.

WHAT ARE MY LAWYER'S DUTIES?

The best summary is contained in a "Declaration of Commitment" published by the American Bar Association, which asks that all lawyers live by these principles and provide copies of them to their clients. These principles are a good guide to what you should expect from your lawyer.

MY DECLARATION OF COMMITMENT TO CLIENTS

To treat you with respect and courtesy.

To handle your legal matter competently and diligently in accordance with the highest standards of the profession.

To exercise independent professional judgment on your behalf.

To charge a reasonable fee and to explain in advance how that fee will be computed and billed.

To return telephone calls promptly.

To keep you informed and provide you with copies of important papers.

To respect your decisions on the objectives to be pursued in your case, as permitted by law and the rules of professional conduct, including whether or not to settle your case.

To work with other participants in the legal system to make our legal system more accessible and responsive.

To preserve the client confidences learned during our lawyer-client relationship.

To exhibit the highest degree of ethical conduct in accordance with the Code of Professional Responsibility/Model Rules of Professional Conduct.

WILL MY CIVILIAN LAWYER TREAT EVERYTHING I SAY CONFIDENTIALLY?

What you say to your lawyer is "privileged information," whether you have a civilian or a legal assistance attorney. With certain very limited exceptions (such as the intention to commit a crime or to give false testimony in court), what you tell your attorney must be held in confidence unless you give permission otherwise. In addition, your attorney must (1) let you make the major decisions in your case, such as pleading guilty in a criminal case or accepting a compromise or settlement in a civil case; and (2) remain open and honest with you in all aspects of your case, including the chances of success, the good and bad sides of your position, the time needed and the fee required.

HOW DO CIVILIAN LAWYERS CHARGE FOR THEIR SERVICES?

Lawyers set fees in a number of ways. The most common types of fee arrangements are flat rates, contingency fees and hourly billing.

WHEN IS A FLAT FEE USED?

A flat fee is one that is paid in advance (ordinarily) and does not vary depending on the amount of time or work involved. Lawyers may use a flat fee in handling certain civil and criminal cases where the work involved is usually straightforward, predictable and routine. Thus many lawyers use a flat rate or set fee in uncontested divorces, simple wills, traffic tickets and misdemeanors, adoptions and name changes. Court costs (filing fees, witness fees, service of process costs, etc.) are usually not included in the flat fee.

WHAT IS A CONTINGENCY FEE?

This arrangement is often found in civil lawsuits that involve suing someone for a sum of money (such as auto accident cases and malpractice claims). In a contingency fee arrangement, the client gives part of the money recovered (if any) to the lawyer (typically 25-40%, depending on whether the case is settled or goes to court). Most lawyers will not agree to a contingency fee unless your case has a clear chance of success. It is also important to know that even if you don't win your case you will probably still be responsible to cover administrative costs (e.g., copies, phone calls, etc.).

WHEN DO LAWYERS CHARGE ON AN HOURLY BASIS?

An hourly rate is common when (a) the client's work will be substantial, (b) it is difficult to determine how long it will take, and (c) there is no suit for money damages involved. For example, such an arrangement might be common in contested custody cases, or for the preparation of a family trust document. It is fairly common for the lawyer to require a retainer to be paid before starting on the case. This is essentially a deposit or down payment, meant to ensure that the client is serious about the case and is financially prepared to cover the costs involved. The size of the retainer, and whether any part of it is refundable, will vary from case to case and lawyer to lawyer.

IS THERE A CHANCE THAT A COURT MIGHT MAKE THE OTHER SIDE PAY MY ATTORNEY'S FEES?

It is possible in certain, very specific types of cases. However, it is important to remember that an award of attorney's fees is never mandatory or automatic but depends on a variety of factors. Some general examples of situations in which courts sometimes award attorney's fees are (a) a lawyer who acts as executor or administrator of a deceased person's estate may be awarded a fee based on the value of the estate; (b) in certain family law cases, one party may be ordered to pay some or all of the other's legal expenses (though this depends on a variety of factors, such as good faith, need, lack of adequate support, and so on); (c) if a contract provides for payment of attorney's fees by one who breaks the contract; (d) if the judge finds that a lawsuit is frivolous (groundless and without justification), attorney's fees may be awarded against the person bringing the suit.

WHAT IF I CAN'T AFFORD TO HIRE A LAWYER?

Talk to the Legal Assistance Office. There may be a legal aid society or public defender office that can help you. You may be able to handle the case yourself (for example, if it can be resolved in small claims court). The Child Support Enforcement Agencies of many states can help obtain an initial child support order without charge. Once child support is ordered, you can obtain help in enforcing payment from the Agency, or the court through which the payments are made. It may be that you don't need a lawyer but need to be referred to another office, such as the installation housing office, the Inspector General, the county health department or the district attorney. Just remember—don't give up! See a legal assistance attorney as early as possible so he or she can listen to the facts and help you determine your options.

ARE THERE ANY OTHER TIPS ABOUT LAWYERS THAT I SHOULD KNOW?

Yes, you should be sure to ask early and often about attorney's fees. Here are some suggestions:

- At the beginning, ask your lawyer how much he or she charges. Insist that your lawyer explain specifically (a) what will be done in your case, and (b) how much it will cost.
- Ask for an estimate of the total charges and ask what services are included in this estimate. Ask what your attorney expects to be the steps you go through and how much time (or expense) they might involve—if you hire an experienced lawyer, he or she should be able to at least "outline" the process for you with a fair degree of accuracy.
- Understand that it is often hard to tell exactly what might be required, and how long it will take, to resolve a legal issue (especially contested matters like lawsuits). Don't expect a specific dollar amount to be quoted to you as "the entire fee" in anything but simple, uncontested matters. In complex matters, be wary of attorneys who promise to handle your entire case for a fixed sum, since it is impossible at the outset to tell what may occur.
- "Shop around" and compare various attorneys, but remember that (a) the cheapest lawyer is not necessarily the worst or best, and (b) the most expensive one may not be the right one for you. Consider location, accessibility, personality, time available and experience in your problem area.
- Consider hiring a lawyer who specializes in your particular kind of case. Many states allow lawyers to advertise themselves as specialists in a particular area of law if they meet certain qualifications. A specialist in your type of case may be more effective than a "general practitioner."
- Be sure you fully understand the lawyer's billing system (e.g., hourly rate, how charges are documented, "refreshing the retainer" and so on).
- Ask your lawyer if the court might assess your attorney fees against the other side (i.e., make your legal opponent pay for your lawyer).
- **GET A WRITTEN CONTRACT** that both you and your lawyer sign. Read the contract closely before signing. Do not hesitate to take it home before signing to read it closely and think about it before committing yourself. Be sure to keep a copy of the contract for yourself.
- **DO NOT BE AFRAID TO ASK QUESTIONS** and **DO NOT FEEL PRESSURED TO ENTER INTO A FEE AGREEMENT YOU ARE NOT COMFORTABLE WITH**—after all, it's your money.

WHAT SHOULD I WATCH OUT FOR WHEN DEALING WITH MY CIVILIAN LAWYER?

Here are some tips on your relationship with any civilian attorney you hire:

- Attorneys are generally required to give frequent case updates and regular communications to their clients; if your attorney is not keeping you in the loop, you need to find out why.
- Do not tolerate unreturned phone calls to your lawyer; you have a right to current information on the status of your case.
- You should receive copies of basic documents filed in your case (e.g., motions, complaints, counterclaims, petitions, judicial orders, etc.).
- The lawyer should release your case file to you upon request and with reasonable notice.

ARE THERE ANY SPECIAL TIPS TO REMEMBER ON HIRING A LAWYER FOR A "MILITARY DIVORCE CASE?"

It is very important to select an experienced attorney if many years of military service are involved. This is because the military pension and related insurance benefits are usually major assets in a military divorce. These benefits, if earned during the marriage, are often subject to equitable distribution between the parties. If, however, the retired member dies, these benefits stop. So, insuring the military pension is very important. Accomplishing a fair division of a military pension and establishing or preserving insurance benefits requires thorough knowledge not only of state law, but also familiarity with the Uniformed Services Former Spouses' Protection Act (USFSPA), a federal statute. Court orders must be properly drafted to comply with both state and federal law. In interviewing a prospective attorney, consider asking the following questions:

- Does the attorney have a military background? Was he formerly a military attorney?
- How many military-related divorces has the attorney completed?
- Are military personnel (or military spouses) regular clients of the attorney?
- Does the attorney seem familiar with the Uniformed Services Former Spouses' Protection Act? Does he have books, etc., on it?
- Has the attorney ever published articles or given lectures about military-related divorce?

WHAT ABOUT HIRING A CIVILIAN ATTORNEY IN KOREA?

You may want to hire a Korean attorney for various reasons (particularly if your legal matter involves Korean law or the Korean courts). The Legal Assistance Office has a list of bilingual attorneys who have assisted US soldiers and civilians in the past. Since Korean attorneys may operate differently from American attorneys, it is critical to clearly address all the issues discussed above before agreeing to representation by a Korean attorney.